

Notice of Allowability

Application No.

09/826,206

Examiner

Manjunath N. Rao, Ph.D.

Applicant(s)

D' ELIA, JOHN

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 6-15-05.
2. ☒ The allowed claim(s) is/are 1,5-14,17-39 and 44-56.
3. ☒ The drawings filed on 05 April 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

8.00

DETAILED ACTION

Claims 1, 5-14, 17-39, 44-56 are currently pending and are present for examination.

Applicants' amendments and arguments filed on 6-15-05, have been fully considered and are deemed to be persuasive to overcome the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

Terminal Disclaimer

The terminal disclaimer filed on 6-15-05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,503,748 has been reviewed and is accepted. The terminal disclaimer has been recorded.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William E. Kuss on 8-26-05.

The application has been amended as follows:

In the claims:

- A) In claim 25, line 1, delete the phrase "A transformed *Escherichia coli* cell comprising" and replace it with "An isolated *Escherichia coli* cell transformed with".

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- B) In claim 26, line 1, delete the phrase “A transformed *Ketogulonigenium* cell comprising” and replace it with “An isolated *Ketogulonigenium* cell transformed with”.
- C) In claim 27, line 2, delete the phrase “host cell comprising” and replace it with “host cell transformed with”.
- D) In claim 27, line 4, delete the word “and” and insert the phrase “said nucleic acid molecule”.
- E) In claim 28, line 6, insert the phrase “said nucleic acid molecule” after “SEQ ID NO:1,”.

These amendments are done with the sole intention of presenting them in better condition for allowance and do not change the original scope of the claims.

Allowable Subject Matter


Claims 1, 5-14, 17-39, 44-56 are allowed.

The following is an examiner’s statement of reasons for allowance: Following a diligent search it was determined that the prior art neither teaches nor suggests an isolated or purified nucleic acid molecule comprising a *Ketogulonigenium* plasmid replicon as shown in SEQ ID NO:1 with the instant properties outlined in claims 5-14, 17-39, 44-56.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The Examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



Manjunath N. Rao, Ph.D.
Primary Examiner
Art Unit 1652

August 29, 2005